



750 E. PRATT STREET SUITE 900 BALTIMORE, MD 21202
T 410.244.7400 F 410.244.7742 www.Venable.com

Matthew T. Murnane

(410) 244-7819

mtmurnane@venable.com

February 5, 2009

James R. Wedeking, Esquire
SIDLEY AUSTIN, LLP
1501 K Street
Washington, D.C. 20005

Re: State of Oklahoma, et al v. Tyson Foods, Inc., et al.
Objection to Subpoena on behalf of Westat, Inc.

Dear Mr. Wedeking:

I enclose an Objection to Subpoena on behalf of Westat, Inc.

Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Matthew T. Murnane", followed by a horizontal line.

Matthew T. Murnane

MTM/jmh

Enclosure

cc: Ingrid L. Moll, Esquire (via electronic mail)

David A. Reesman, Esquire (via electronic mail)

035315-267851

BA2/#360112

Exhibit 13

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

STATE OF OKLAHOMA, <u>et al.</u>	:	
	:	
Plaintiffs,	:	CASE #: 4:05-CV-00329-GKF-PJC
v.	:	In the United States
	:	District Court for the
TYSON FOODS, INC., <u>et al.</u>	:	Northern District of
	:	Oklahoma
Defendants	:	
	:	

OBJECTION TO SUBPOENA ON BEHALF OF WESTAT, INC.

Nonparty Westat, Inc., by and through its undersigned attorneys, pursuant to Fed. R. of Civ. Proc. 45, objects to the command to produce and permit inspection and copying of the documents or objects specified in the Subpoena In A Civil Case dated January 29, 2009 (the “Subpoena”) and issued at the request of Defendants Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc. (collectively “Tyson”), and in support thereof states as follows:

1. The Subpoena on its face is overly broad and unduly burdensome in that it seeks the production of several categories of documents, including electronically stored information (“ESI”), eight (8) days after service of the Subpoena. Rule 45(c)(2)(B) provides that a party may object to a subpoena seeking the production of documents. Rule 34, covering, among other things, the discovery of documents, including ESI, from a party, provides that a party to whom a request for documents is directed shall respond within 30 days after being served. Fed. R. Civ. Proc. 34. Tyson’s Subpoena seeking the production of documents and ESI within eight days of service and twenty-two days less than the time allowed for parties to respond to similar requests under Rule 34 is prima facie unreasonable and unduly burdensome.

2. Putting aside the unreasonable period of time to respond to the Subpoena, the subpoena is overly broad and unduly burdensome, and as a result, Westat objects to the Subpoena and refuses to produce the information requested. Westat currently has ESI on its system containing over 21,000 files and 10.9 gigabytes. Westat estimates that it will take at least four employees, including project managers, programmers and assistants, collectively more than 100 hours at a labor cost of approximately \$5,000 to retrieve the data in a format that can be produced. This estimate does not include data stored on back-up tapes and other information not readily available. If Westat is required to retrieve data, information and documents not readily available, the labor cost will increase exponentially. In addition, Westat objects to the Subpoena and refuses to produce the information and documents requested because Tyson fails to indicate in the Subpoena its willingness to pay the reasonable costs incurred by Westat to retrieve and produce the documents and information requested.

3. Westat objects to the Subpoena because it seeks information protected by the attorney-client privilege or work product protection. Plaintiff has identified Stratus Consulting, Inc. ("Stratus") as a testifying expert in the case captioned *State of Oklahoma, et al. v. Tyson Foods, Inc., et al.*, Case No. 4:05-CV-00329-GKF-PJC, in the United States District Court for the Northern District of Oklahoma (the "Underlying Case"), and Westat has been retained as a non-testifying expert. Westat provided information to Stratus, Plaintiff's damages expert, for its consideration in assessing the damages in the Underlying Case, and Westat understands that in the Underlying Case Plaintiff produced the information that Stratus considered, including information received from Westat, in accordance with Rule 26. The work product protection precludes Westat from producing any information or documents other than that already produced in the Underlying Action.

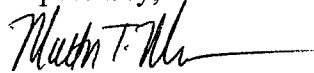
4. Westat objects to the Subpoena because it seeks confidential information, including the identities of the survey respondents and interviewers. Westat is a member of the Council of American Survey Research Organizations (“CASRO”). CASRO has established a detailed Code of Standards for Survey Research (the CASRO Code) and a set of Business Practice Guidelines, both of which establish specific responsibilities for professional survey researchers to maintain the confidentiality of information that might reveal the identities of survey respondents. Indeed, the CASRO Code provides that “it is essential that Survey Research Organizations be responsible for protecting from disclosure to third parties—including Clients and members of the Public—the identity of individual Respondents as well as Respondent-identifiable information, unless the Respondent expressly consents.” CASRO Code, I.A.1. As a member of CASRO, Westat is required to adhere to the CASRO Code and Business Practice Guidelines. Several courts have recognized the public interest in maintaining the confidentiality of survey respondents. *E.g., Lampshire v. Proctor & Gamble Co.*, 94 F.R.D. 58 (N.D. Ga. 1982); *Farnsworth v. Proctor & Gamble Co.*, 758 F.2d 1545 (11th Cir. 1985); *Richards of Rockford v. P.G.&E.*, 71 F.R.D. 388 (N.D. Ca. 1976); *Applera Corp. v. MJ Research, Inc.*, 389 F. Supp.2d 344, 350 (D. Conn. 2005) (acknowledging researchers’ ethical prohibition on disclosure of the identities of survey respondents as a legitimate basis for preserving confidentiality). The respondents who participated in this case did not consent to the release of their identity, and Westat objects to producing any information that would reveal the identities of the survey respondents or interviewers.

5. In addition, the identity of the survey respondents is not relevant to the claims and defenses asserted in the Underlying Case or reasonably designed to lead to the discovery of admissible evidence, and Westat objects to the Subpoena on that basis.

6. Westat understands that much of the information requested in the Subpoena is or was the subject of a discovery dispute in the Underlying Case. Tyson's issuance and service of the Subpoena appears to be nothing more than an end run around the process for resolving discovery disputes in the Underlying Action. Accordingly, Westat objects to the production of the information and documents requested in the Subpoena because the discoverability of the information sought should be resolved in the Underlying Case.

WHEREFORE, for the foregoing reasons and for such other and further reasons as may be raised by any party to the Underlying Case, Westat objects to the Subpoena and refuses to produce or permit the inspection of the information and documents requested.

Respectfully,



Matthew T. Murnane
Venable LLP
Suite 900, 750 E. Pratt Street
Baltimore, Maryland 21202
(410) 244-7400

Attorneys for Westat, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of February, 2009, a copy of the foregoing Objection to Subpoena was delivered via electronic mail and UPS overnight mail to James R. Wedeking, Esquire, Sidley Austin, LLP, 1501 K Street, NW, Washington, D.C. 20005.



Matthew T. Murnane